IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21664 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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ASHWINBHAI VAJESINH GOHIL - Petitioner(s)

Versus

COMMISSIONER OF THE CITY OF SURAT & 2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 07/12/2005

ORAL JUDGMENT

1.Ashwinbhai Vajesinh Gohil, petitioner has filed this habeas corpus petition under Article 226 of the

Constitution of India for quashing and setting aside the order of detention dated 15/9/2005 passed by the Police Commissioner, Surat. Petition was filed on 20/10/2005. On 25/10/2005, this Court (Coram:A.S.Dave, J) has issued rule which is returnable after four weeks. Hence, matter has been placed for hearing to this Court.

2. Ms.Banna Dutta, learned advocate has relied upon the order of detention dated 15/9/2005 passed under the provisions of PASA Act. Detenu was also detained at Nadiad Jail by the committed order dated 15/9/2005. The learned counsel has submitted that petitioner in this case is co-detenu in earlier petition i.e. Special Civil Application No.21655 of 2005 and therefore, as far as this petition is concerned, only criminal case No. 5403 of 2005 under Section 66(1) (B), 65(E)(A), 81 and 116(B) is registered at Varacha Police Station. Offence was committed on 28/8/2005. It was alleged that petitioner has stored 240 bottles of country liquor valued at Rs.48,000/-, one mobile, one scooter and cash of Rs.600/- (total Rs.56,600/-). This incident also pertains to the second offence of the earlier petition.

3.I have heard Ms.Dutta, learned advocate. She has stated that activities of the petitioner are not prejudicial to the public order. For the same, the learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta and also relied upon judgment of the Division bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in LPA No.223 of 2000 in SCA 554 of 2000 in the case of Ashok Balabhai Makwana v. State of Gujarat and one other judgment of the Division Bench of this Court (C.K.Thakkar and K.M.Mehta, J.J.), reported in 2000 (1) GLR 816 in the case of Ashokbhai Jivrajbhai v. Commissioner of Police.

4.On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has tried to support the order of detention. He has relied upon the order of detention and grounds stated therein. Respondents have not filed affidavit in this behalf.

5.Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf.

Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana and another division bench judgment of this Court (C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

6. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case under the Bombay Prohibition Act along cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Bombay Prohibition Act or the activities of bootlegging of the detenu. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even

tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000 and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

7. I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the

petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

8. In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Aswinbhai Vajesinh Gohil, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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